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Trans-Tasman judges reject call for tighter controls on foreign work

'How can judges, sworn to uphold justice, abandon their principles to prop up this charade in Hong Kong?' freedom committee asks

by **Sam Sachdeva**
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The involvement of foreign judges in the controversial trial of Hong Kong media tycoon Jimmy Lai (centre) has led some to call for greater ethics restrictions on retired members of the judiciary. Photo: Getty Images.

New Zealand and Australia's top judges have knocked back a request to bar retired members of the judiciary from taking up roles with authoritarian regimes, after criticism of ex-judges joining a top Hong Kong court.

In June, Sir William Young was appointed as one of six foreign non-permanent judges on Hong Kong's Court of Final Appeal, having served on New Zealand's Supreme Court from 2010 until his retirement in 2022.

The Hong Kong court has been hit with a number of resignations after the Chinese government's 2020 decision to impose its controversial national security law on the territory, with one British judge saying it was "slowly becoming a totalitarian state" after stepping down.

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The territory's justice system has faced further scrutiny over the trial of media tycoon Jimmy Lai, who was convicted of "colluding with foreign forces" under the national security law last month.

Hong Kong's High Court wrapped up mitigation hearings for Lai's case last week, with a maximum sentence of life imprisonment.

Australian lawyer and former Hong Kong resident Mark Tarrant wrote to the Council of Chief Justices of Australia and New Zealand in April last year, asking them to add a section to their judicial conduct guide prohibiting both current and former judges "from being employed by an authoritarian regime or administration where senior officials have been sanctioned for human rights abuses, unless authorised by the Attorney-General of Australia (or New Zealand)".

In a response last month, the council's secretary, Richard Glenn, said the justices had considered the proposal at a meeting the month prior but were "not minded to include an amendment of the nature you suggest".

Tarrant told Newsroom the decision was disappointing but not unexpected, given the "unusually warm relationship" between the Australian judiciary and Hong Kong's designated national security law judges.

In March last year, three such judges had travelled to Canberra to take part in the Asia-Pacific Judicial Colloquium, despite being on a list of proposed sanctions for human rights abuses drafted by United States lawmakers.

Tarrant said such engagements came with national security risks, given Hong Kong police had issued bounties for the arrest of four Hong Kong democracy advocates living in Australia.

Committee for Freedom in Hong Kong Foundation president Mark Clifford told Newsroom that Lai's guilty verdict was "a damning testament to the fact that Hong Kong's courts are nothing more than puppets of Beijing", given he had been stripped of bail, denied his choice of lawyer and "robbed" of a jury trial.

"That the Council of Chief Justices of Australia and New Zealand has refused to advise judges against lending their prestige to such a repressive regime is nothing short of shameful.

"The world is watching. And the question ringing out is: how can judges, sworn to uphold justice, abandon their principles to prop up this charade in Hong Kong?"

NZ review underway

Asked by Newsroom last year whether there was a need for new ethics guidelines on the matter, Chief Justice Helen Winkelmann noted New Zealand lacked clauses found in Australian guidelines that covered post-retirement conduct by the judiciary.

“I’m instituting a review of our guidelines, and that is something that I will be asking the reviewers to have regard to.

“There are some models throughout the world, but the reality is that once someone is past retirement age, we do not have any sort of control over those people.”

Winkelmann said she was “always concerned about anything that impacts on the standing of the judiciary, or indeed upon New Zealand’s standing in international affairs”.

A spokesperson for the Chief Justice confirmed she had “asked that consideration be given to whether guidance on post-retirement conduct should be included” in an update of New Zealand’s judicial conduct guidelines.

The spokesperson said she could not comment further on the review, which was still in its preliminary stages, or the Council of Chief Justices’ decision.

A spokesperson for the council told Newsroom the body had “no comment in relation to your questions”.

Sir William Young has previously refused to comment on criticism of his decision to join the court, beyond saying he “would not accept appointment to that Court unless satisfied it was proper for me to do so”.

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